

NOV 12 2010

Attorney Docket No.: 037003-0276603

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION OF

Confirmation No.: 1215

Darrell R. ANDERSON et al.

Group Art Unit: 1644

Application No. 09/758,173

Examiner: Phillip Gamber

Filed: January 12, 2001

Patent No. 6,893,638

Issued: May 17, 2005

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OFFICE OF PETITIONS

Title: METHODS FOR TREATING B CELL LYMPHOMA USING CD80-SPECIFIC  
ANTIBODIES

NOTICE OF LOSS OF ENTITLEMENT TO CLAIM SMALL ENTITY STATUS

and

PETITION UNDER 37 C.F.R. §1.28(c) TO EXCUSE ERRORS IN SMALL ENTITY  
STATUS AND ACCEPT PAYMENT OF DEFICIENCY OWEDMail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a petition under 37 C.F.R. §1.28(c) to excuse an error in payment of maintenance fees as a small entity and accept payment of fees as a large entity for the above-identified patent.

Pursuant to 37 C.F.R. §1.28(d), any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under 37 C.F.R. §1.28(c) will be treated under 37 C.F.R. § 1.27(g)(2) as a notification of a loss of entitlement to small entity status. By submitting the present petition under 37 C.F.R. §1.28(c), the patent owner, through the undersigned, hereby gives notice under 37 C.F.R. § 1.27(g) to the United States Patent and Trademark Office ("Office") that they are no longer entitled to claim small entity status.

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37 C.F.R. §1.28(c) establishes how errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that through error the Office was not notified of a loss of entitlement to small entity status as required by 37 C.F.R. §1.27(g)(2), the error will be excused upon compliance with the separate submission and itemization requirements of 37 C.F.R. §1.28(c)(1) and 37 C.F.R. §1.28(c)(c)(2), and the deficiency payment requirement of 37 C.F.R. §1.28(c)(2).

U.S. Patent Application No. 09/758,173 was filed on January 12, 2001, as a division of U.S. Patent Application No. 09/383,916, which is a division of U.S. Patent Application No. 08/487,550, with a copy of the statement claiming small entity status that was previously filed in US Patent Application No. 08/487,550 on June 7, 1995, and the filing fee was paid at the small entity rate. Beginning with the Amendment and Reply filed on March 11, 2003, January 10, 2002, fees during prosecution of U.S. Patent Application No. 09/758,173 were thereafter paid at the large entity rate. The issue fee was paid at the large entity rate and the Fee Transmittal form PTOL-85 filed on September 29, 2004, was amended to reflect that the issue fee was being paid at the large entity rate of \$1300 and not the small entity rate of \$665 as originally listed. However, it has come to our attention that the Office was not notified of a loss of entitlement to small entity status during prosecution, as required by 37 C.F.R. § 1.27(g)(2). The first maintenance fee (3.5 yrs) for U.S. Patent No. 6,893,638 was paid at the small entity rate on November 17, 2008.

In accordance with 37 C.F.R. §1.28(c)(1), the present paper is limited to the deficiency payment required by paragraph 37 C.F.R. §1.28 (c)(2), for U.S. Patent Application No. 09/758,173, now U.S. Patent No. 6,893,638.

In accordance with 37 C.F.R. §1.28(c)(2), the deficiency owed, resulting from the previous erroneous payment of small entity fees, based on calculations required under 37 C.F.R. §1.28(c)(2)(i), as supported by the itemizations required under 37 C.F.R. §1.28(c)(2)(ii), is hereby paid.

The deficiency owed is calculated in accordance 37 C.F.R. §1.28(c)(2)(i), where the deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee

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payment, as shown in the following itemization in accordance with 37 C.F.R.  
§1.28(c)(2)(ii):

|                    |  |
|--------------------|--|
| §1.28(c)(2)(ii)(A) | Type of fee erroneously paid: Maintenance Fee (3.5 years)      |
| §1.28(c)(2)(ii)(B) | Small entity fee actually paid: \$490.00                       |
|                    | Date small entity fee was paid: November 17, 2008              |
| §1.28(c)(2)(ii)(C) | Deficiency owed = large entity fees currently due -- fees paid |
|                    | Current 3.5 year large entity fee: \$980                       |
|                    | Deficiency amount owed: \$980 - \$490 = \$490                  |
| §1.28(c)(2)(ii)(D) | Total deficiency payment owed: \$490                           |

Payment in the amount of \$490 is enclosed. The Commissioner for Patents is authorized to charge any additional fees, credit any overpayments, to Deposit Account Number 033975.

Should the Deciding Official have any questions or comments regarding this matter, the undersigned may be contacted at the telephone number listed below.

Respectfully submitted,

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Date: November 12, 2010

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